

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Mark Stutler

Examiner Robert Canfield

Serial No. 10/081,156

Group Art Unit 1775

Filed: February 25, 2002

For: FRESH MASONRY WALL PROTECTION DEVICE AND METHOD
FOR RAPIDLY PROTECTING A NEWLY LAID MASONRY WALL

APPEAL BRIEF TRANSMITTAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Attached hereto are three (3) copies of the BRIEF ON APPEAL for the above-identified application.

Also attached is our check in the amount of \$165.00, small-
entity, in payment of the brief fee as provided by 37 C.F.R.
1.17(f).

Petition is hereby made to the Commissioner for Patents to
extend the period for filing the appeal brief for one (1) month, so
as to expire May 30, 2004. A check in the amount of \$55.00 in
payment for the extension is also attached.

Any additional fees necessary to effect the proper and timely
filing of this Brief may be charged to Deposit Account No. 26-0090.

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02 FC:2251

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Respectfully submitted,

Jim Zegeer

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Date: May 20, 2004

In the event this paper is deemed not timely filed, the applicant hereby petitions for an appropriate extension of time. The fee for this extension may be charged to Deposit Account No. 26-0090 along with any other additional fees which may be required with respect to this paper.

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Atty. Docket No.: 3152A-Z

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BRIEF ON APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the final rejection of the Examiner dated October 20, 2003, finally rejection claims 1, 6, 13 and 15 of the above-identified application. The remaining claims have been indicated allowable or containing allowable subject matter.

I. The Real Party in Interest

The real party in interest is Mark Stutler.

II. Related Appeals and Interferences

There are no related appeals or interferences.

III. Status of the Claims

Claims 1 - 4 and 5 - 17 are pending in the application. Claims 2 - 4, 7 - 12, 14 and 16 - 17 are believed to contain allowable subject matter and are in condition for allowance. Claims 1, 6, 13 and 15 are under appeal.

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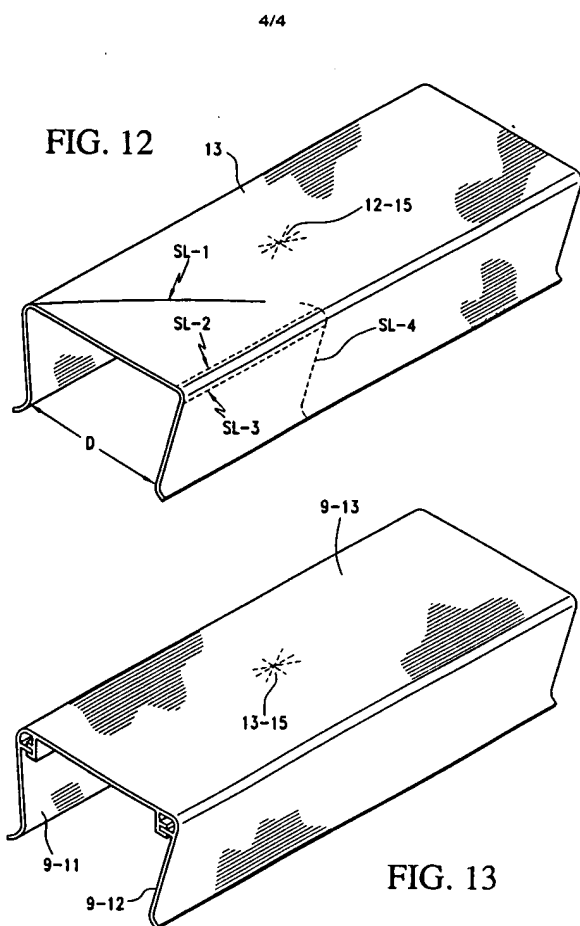
IV. Status of the Amendments

An amendment was filed subsequently to the final rejection on February 20, 2004 concurrently with the filing of a Notice of Appeal, but appellant has not been advised yet as to the status of that amendment. This appeal brief is filed on the assumption that the amendment has been entered.

V. Summary of the Invention

At the end of a typical workday in every masonry job site, the problem exists of how to protect the previously laid masonry from inclement weather. In the past, this has been handled by sheet plastic that is draped on each side of the wall and held down by blocks or bricks or other heavy material. This creates an umbrella affect when the wind blows, is frequently unsightly, and rips and tears and blows off of the walls; and this becomes a clean-up issue.

The present invention solves this problem by protecting the cores of masonry walls from inclement weather during construction. The invention reduces labor costs and waste and provides a neat appearance while keeping the inner wall dry. It also helps prevent



efflorescence and mold. The invention expedites painting and other finishing saving time and money. Figures 12 and 13 of the drawings is reproduced to the left hereof for convenience of reference. It is comprised of a thin plastic U-shaped channel member having a top panel member 9-13 (Fig. 13) and a pair of parallel side panel members 9-11 and 9-12. The top panel member has a width greater than the width of the newly laid block or brick wall and is a smooth flat

innerface which is adapted to engage the topmost surface of the newly laid block or brick wall.

The parallel side panel members 9-11 and 9-12 are springy and angled inwardly so that they engage the newly laid block or brick wall and have lower ends which angle outwardly to form a guideway for installing the device on the newly block or brick wall. It protects the wall from inclement weather and provides temporary reinforcements for the upper layers of the newly laid block or brick wall and protects it against inclement weather.

As shown in Fig. 12, one end of the channel element can be provided with score lines SL1, SL2, SL3, SL4 for adapting ends of the device to cover corners and other wall angulations..

Thus, the device protects cores of masonry walls from inclement weather during construction and provides a neat appearance while keeping the inner core of the wall dry and helps prevent efflorescence and mold. In addition, the invention helps expedite painting and other finishes, saving construction time and money.

VI. Issues

Issue 1. Claims 1 - 4, 6 and 15 - 17 were rejected under 35 U.S.C. §112, second paragraph, and these rejections are believed to be moot in view of the amendment filed after the final rejection. Appellant has not received an Advisory Action on that amendment.

Issue 2. Was the Examiner correct in finally rejecting claims 1, 6 and 15 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,479,750 to Carlberg?

Issue 3. Was the Examiner correct in finally rejecting claims 1, 6, 13 and 15 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,772,185 to Pulsipher?

VII. Grouping of Claims

The claims stand or fall together.

VIII. Argument

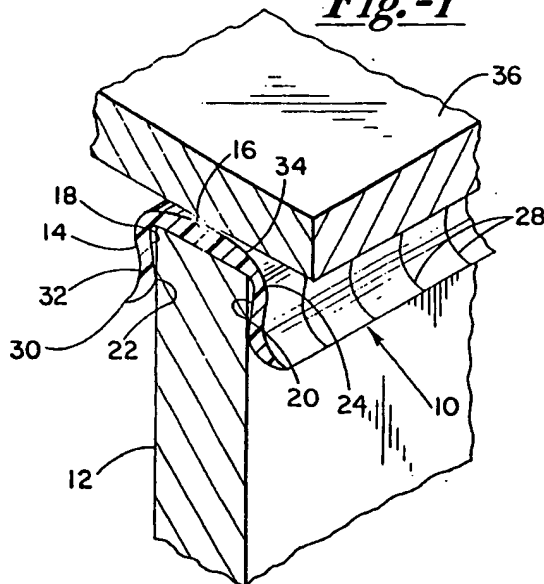
Issue 1.

The indefinite rejection under 35 U.S.C. §112, second paragraph is believed mooted by the amendment filed after final rejection.

Issue 2.

The rejection of claims 1, 6 and 15 as being anticipated by Carlberg is clearly in error.

Fig.-1



The Examiner refers to Figure 1 of Carlberg which is reproduced to the left hereof for convenience of reference.

Note that Carlberg states:

Since joist cap 10 is comprised of a flexible plastic material of moderate thickness, fasteners, such as nails or screws, can be driven through the floor material 36,

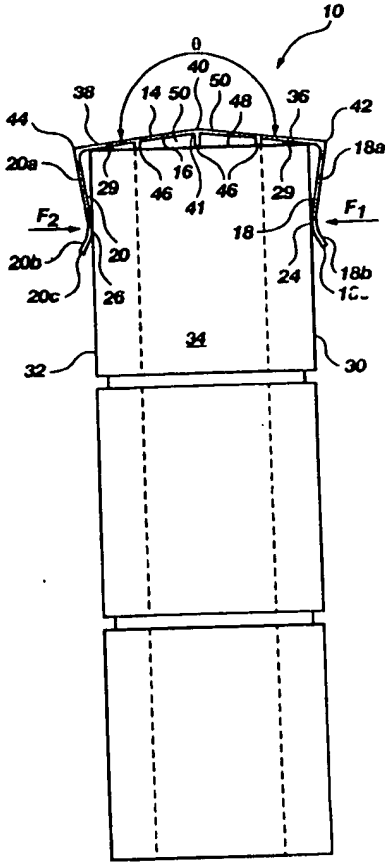
through joist cap 10, and into the upper support surface of joist 12 to be secured thereto. While a thin metal material could be used to form joist cap 10, plastic is preferred since it is non-corrosive, provides a water seal around the fasteners, can be formed of color coordinated plastics, is more flexible, and can have resilient properties to provide a sound dampening feature as well. A plastic material having a resilient property will dampen noise and vibration generated when one walks upon support surface 36. (Col. 4, lines 37-49)

Thus, Carlberg's plastic cap 10 is of moderate thickness; it does not have a thin top panel member; and hence does not anticipate the claims. Moreover, Carlberg is not a reusable device.

Claim 15 recites a reusable fresh masonry wall protection device and clearly the Carlberg device is not that. It is not reusable and it does not protect and reinforce the top layer of a newly laid block or brick wall. It is not a thin plastic shell and does not have ends of a leg which angle outwardly to form a guideway for installing the protection device on a newly laid block or brick wall. Clearly, the Examiner has erred in rejecting claims 1, 6 and 15 on this prior art.

Issue 3.

The Examiner has clearly erred in rejecting claims 1, 6, 13 and 15 under 35 U.S.C. §102(b) as being anticipated by Pulsipher.



The Examiner refers to Figures 1 and 2 of Pulsipher and Figure 2 is reproduced to the left hereof for convenience of reference.

Pulsipher does not anticipate the claims. The resilient wall cap of this reference does not appear to be reusable and does not appear to be designed for protecting newly laid block or brick walls from inclement weather. In claim 1, the top panel member

is characterized as having a "smooth, flat innerface which is adapted to engage the topmost surface of said newly laid block or brick wall" which is not the case with Pulsipher. It should be noted in this regard that claim 15 does not have this limitation therein and that this limitation is not in method claim 13.

Dealing with method claim 13, it should be noted that this claim recites that the protection device of this invention is first engaged at one end of the wall and:

... (c) then pivoting said channel member about the point of engagement of said side panel members with said wall in a generally downward direction to seat one end of said channel member on said wall and essentially align said channel members with said wall, and

(d) then seating the remainder of said channel member on the top of said wall by progressively pressing downwardly on said channel top panel member beginning at said one end.

This is not taught or suggested by the Pulsipher reference.

CONCLUSION

In conclusion, the Examiner has erred in finally rejecting the claims and should be reversed.

Respectfully submitted,



Jim Zegeer, Reg. No. 18,957
Attorney for Appellant

Attachment: APPENDIX (Claims on appeal)

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Telephone: 703-684-8333

Date: May 20, 2004

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APPENDIX

1. A reusable fresh masonry wall protection device for rapidly protecting a newly laid block or brick wall from inclement weather and providing temporary reinforcement for the upper layer of newly laid blocks or bricks, said newly laid wall having a width W comprising:

a thin plastic channel element having a top panel member and a pair of parallel side panel members,

said top panel member having width greater than W and a smooth, flat inner face which is adapted to engage the topmost surface of said newly laid block or brick wall,

said parallel side panel members being springy and angled inwardly so that they engage the newly laid block or brick wall, and have lower ends which angle outwardly to form a guideway for installing said protection device on said newly laid block or brick wall.

6. The reusable fresh masonry protection device defined in claim 1 wherein one end of said channel element is provided with score lines for adapting the ends of said devices to cover corners and other wall angulations.

13. A method for rapidly protecting a newly laid block or brick wall from inclement weather and providing temporary reinforcement for said top row, said newly laid block or brick wall having oppositely facing sides and a top row of blocks or bricks, said top row having an end block or brick, and providing temporary reinforcement for said top row comprising:

(a) providing reusable extruded channel member having a top panel member and a pair of parallel side panel members, said

parallel side panel members being springy and angled inwardly so that they simultaneously engage said oppositely facing sides of the newly laid block or brick wall when in place on the wall and have angled ends forming a guideway for receiving the top row of said newly laid block or brick wall,

(b) engaging said sides of said wall adjacent the top with one end of said guideway and expanding the distance between the engaging side panel members by the width of said wall,

(c) then pivoting said channel member about the point of engagement of said side panel members with said sides in a generally downward direction to seat one end of said channel member on said wall, and essentially align said channel member with said wall, and

(d) then seating the remainder of said channel member on the top of said wall by progressively pressing downwardly on said top panel member beginning at said one end.

15. A reusable fresh masonry wall protection device for rapidly protecting from inclement weather and temporarily reinforcing the top layer of a newly laid block or brick wall, having a width W and oppositely facing sides, comprising:

a plastic shell element having a top panel member and a pair of parallel side panel members, said top panel member has a width which is wider than the width of the newly laid block or brick wall and the lateral ends of said top panel member being joined to said parallel side panel members, said parallel side member being springy and angled inwardly so that they engage said oppositely facing sides of said newly laid block or brick wall and have lower ends which angle outwardly to form a guideway for installing said protection device on said newly laid block or brick wall.